

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 109 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy
of the judgment ? **-No.**

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge
? **-No.**

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SHAMJIBHAI NANJIBHAI KOTADIA - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR HARSHAD K PATEL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PINAKIN B RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 09/04/2007

ORAL JUDGMENT

1. Rule. Learned APP Mr.K.C.Shah waives service of
Rule on behalf of the State.

2. Shamjibhai Nanjibhai Kotadia, applicant has filed this revision application under Section 397 read with Section 401 of Criminal Procedure Code with a prayer that this Court may be pleased to quash and set aside the judgment and order dated 11/7/2006 passed by the learned JMFC, Keshod in Criminal Case No.1619 of 2002 as well as the order dated 20/1/2007 passed by the learned Additional Sessions Judge and Fast Track Judge, Junagadh in Criminal Appeal No.34 of 2006 in the interest of justice. Earlier the matter was placed for hearing and this Court has passed an order on 30/3/2007.

3. Shamjibhai Nanjibhai Kotadia and Pritamlal Pandya, father of respondent no.2 are friends. Applicant was interested in purchase of truck and therefore he availed loan from Keshave Kredit Society. Applicant is an illiterate person and the father of respondent no.2 being educated and good friend of the applicant, the applicant used to take help of father of respondent no.2 to issue cheque in favour of the society. In fact, the applicant used to keep the entire cheque book with the father of

respondent no.2.

4. As per the case of the complainant, the complainant being the son of friend of the applicant, had given loan aggregating to Rs.1,00,000/- to the applicant on different dates. It is further alleged that in pursuance tot he above outstanding amount, the applicant had issued cheque no.0100682 dated 18/4/2002 drawn on Union Bank of India, Keshod Branch in favour of the complainant. It is further alleged that upon presentation of cheque, the same came to be dis-honoured on 9/8/2002. The respondent no.2 was initiated by its bankers vide memo dated 9/8/2002. The respondent no.2 thereafter, issued notice under Section 138 of Negotiable Instruments Act on 19/8/2002 i.e. after a period of about 40 (forty) days thereby calling upon the applicant to pay the outstanding amount of Rs.1,00,000/-. It is further alleged that when the applicant did not pay the outstanding amount, the respondent no.2 filed the impugned complaint being Criminal Case No.1966 of 2002 before the learned JMFC, Keshod against the applicant.

5. The learned Magistrate issued notice against the applicant and the applicant entered his appearance in the proceedings. The respondent no.2 and the applicant were examined during the course of trial. Number of evidences were produced by both the parties.

6. In fact, the applicant had never taken loan of any amount from the respondent no.2 as alleged. That the applicant being illiterate person and father of the respondent no.2 being his good friend, the applicant used to keep his cheque book with the respondent no.2. However, the respondent no.2 has misused the cheque and has initiated false criminal proceedings. The applicant pointed out all these facts during the trial before the learned Magistrate.

7. Though the respondent no.2 failed to show that the applicant had taken loan aggregating to Rs.1,00,000/- and that the applicant had issued the impugned cheque towards the outstanding dues and though the respondent no.2 had failed to prove his case, the learned Magistrate by his order dated

11/7/2006, convicted and sentenced the applicant-accused to suffer R.I. for a period of one year and to pay a fine of Rs.5,000/- for the offence punishable under Section 138 of Negotiable Instruments Act. The applicant is also directed to deposit an amount of Rs.1,20,000/- after the appeal period is over.

8. Being aggrieved and dissatisfied by the impugned order of conviction and sentence dated 11/7/2006 passed by the learned JMFC, Keshod, the applicant preferred Criminal Appeal No.34 of 2006 before the learned Additional Sessions Judge and Fast Track Judge, Junagadh.

9. However, without appreciating the facts, evidence and circumstances of the case and settled position of law, the learned Judge by his order dated 20/1/2007 dismissed the Criminal Appeal No.34 of 2006 and confirmed the order passed by the learned Magistrate.

10. When the matter was placed for hearing before this Court, affidavit of Ashokkumar Pritamlal Pandya has

been filed. The same may be taken on record. The respondent no.2 is also present before the Court. After going through the affidavit and purshis filed in the matter, prayer in terms of para 8(A) is granted.

11.The amount of cost of Rs.5,000/- which has been paid by the applicant may not be refunded to him. To the aforesaid extent, this revision application is allowed. Rule made absolute to the aforesaid extent.

12.In view of the final disposal of the matter, the accused may be released from jail. Direct service is permitted. Criminal Misc. Application is also disposed of accordingly.

(K.M.Mehta, J.)

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